

Military Service after Enrollment and USERRA

All Funds

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) — 38 USC 4301 et seq. — provides benefit protection to employees who leave public employment to serve in the uniformed services.

Provisions of the New Jersey Administrative Code — N.J.A.C. 17:1-3.10 — were adopted to comply with USERRA and apply the federal requirements to all the defined benefit and defined contribution retirement systems administered by the Division of Pensions and Benefits.

MILITARY SERVICE USED FOR BENEFIT QUALIFICATION

USERRA provides benefit protection to an employee who leaves public employment after October 13, 1994, to serve in the uniformed services and then returns to public employment within time frames specified in the law — normally within 90 days of the end of the uniformed service.

Upon return to public employment, the employee is entitled to the restoration of certain pension and similar benefits that would have accrued but for the employee's absence due to the qualified USERRA service. USERRA requires an employer to treat an employee's time in the uniformed services as if the employee had never left public employment for the purposes of **vesting** and/or **determining eligibility** for retirement and health benefits.

For example, an employee with 24 years of pension credit and one year of USERRA-eligible service in the uniformed services would have 25 years of service for the purpose of determining eligibility for retirement. That employee, if a PERS or TPAF member, would be eligible for Early Retirement. The employee would also be eligible for employer-paid health benefits coverage based on 25 years of service (if the employer normally provides this benefit).

An example for vesting purposes would be that an employee with eight years of pension credit and two years of USERRA-eligible service would be vested.

Note: The employee need not return to employment with the same public employer the employee left to enter the military service. The employee can return to employment with a different public employer, as long as that employer participates in and the employment is covered under the same retirement system that the member was enrolled in prior to the USERRA-eligible service.

For example, a PERS member from "Township A" terminates employment to serve in the uniformed services for two years. Upon completion of military service, the employee returns to public employment at "Township B" within the timeframe specified by law. The employee is eligible for USERRA service credit.

MILITARY SERVICE USED FOR BENEFIT CALCULATION

While USERRA-eligible service can be used to determine eligibility for benefits, the actual **calculation** of retirement benefits will not use the USERRA-eligible service unless the employee pays required pension contributions for the period of military service. The employee may receive this pension credit for the period of uniformed service by making the **pension contributions that would have been** required had the employee not left employment to serve in the uniformed services. **Payment to the retirement system of any contributions for USERRA-eligible service is optional and voluntary on the part of the employee.**

When notified of an employee's USERRA-eligible service (See "The USERRA Process" on page 2), the Division of Pensions and Benefits will notify the employee of the amount of contributions required so that the period of military service can be used in the calculation of retirement benefits. The contributions are based on the pensionable salary the employee would have received had the employee not left employment for military service.

If the determination of the pensionable salary by the former employer is not reasonably certain, the required contributions will be based on the employee's average pensionable compensation during the 10- or 12-month period immediately preceding the military service.

Any payment to the retirement system for USERRA service must be made during the period that begins on the date of reemployment and must be completed before the lesser of either five years or three times the period of the uniformed service.

For example, if an employee returns to employment after three months of USERRA-eligible service, back deductions for that service must be paid during the first nine months after the return to employment.

ADDITIONAL ELECTIVE CONTRIBUTIONS TO SUPPLEMENTAL RETIREMENT PLANS

USERRA also permits employees to make additional elective deferrals for any programs, e.g., Deferred Compensation, SACT, or ACTS programs, in which they were enrolled immediately prior to their military service. These deferrals may not exceed the maximum amount employees would have been permitted to contribute during the period of military service had the employees been continuously employed by the public employer during those periods.

ALTERNATE BENEFIT PROGRAM EMPLOYERS

If an employee participates in the Alternate Benefit Program (ABP) and is reemployed under the provisions of USERRA by an employer who participates in the ABP, the employer must allocate the amount of any employer contribution for that employee in the same manner and extent that the allocation occurred for other employees during the same period of service. However, the employee is entitled to these employer contributions only if he or she makes the employee contributions to the plan for the period of uniformed service.

The procedures to follow for the ABP are the same as are shown in "The USERRA Process" (below). The vehicle for reporting the employee contributions and securing reimbursement from the State of New Jersey for the employer's contribution is the

Alternate Benefit Program Employer Contribution Report. Under the Mandatory Back Deduction section of the report, the employer should report the employee's name, Alternate Benefit Program number, and the salary amount on which the employee contributions to the plan for the period of uniformed service are made. A notation indicating that this salary is relative to military service after employment should also be provided.

The employer is not required nor expected to make up the earnings that contributions made for USERRA-eligible service would have made had the employee been employed continuously.

EMPLOYER RESPONSIBILITIES

It is the employer's responsibility to notify employees of the benefit protection provided by USERRA. This can be done by posting a notice to employee bulletin boards, distributing a description of the benefit in a human resource newsletter, and/or directly contacting employees the employer can identify as having USERRA-eligible service.

Any request for USERRA-eligible service credit *should be made within 30 days of return to employment*. If the member wants the USERRA-eligible service to be used to calculate benefits, the request must be made so the contributions can be collected within the lesser of either five years or three times the period of the uniformed service from the date of reemployment.

THE USERRA PROCESS

The following actions should occur when an employee returns to covered employment within the time frames specified under USERRA.

1. The employer should notify the Division of Pensions and Benefits no later than 30 days after the employee's return from the uniformed services by submitting a *Request for USERRA-Eligible Service* form. The form can be found in the *Forms Index* of the *Employers' Pensions and Benefits Administration Manual (EPBAM)* which is linked from the Division of Pensions and Benefits Web site at: www.state.nj.us/treasury/pensions/epbam/

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Notification is also required for employees on a leave of absence for military service, without pay, for which no deductions were made and no service credited to their pension accounts.

Note: *If the employee received pay from the employer, had pension deductions taken, and, therefore, received pension credit for the period of military service, no action is required of the employer with respect to USERRA for pension purposes.*

2. When notified, the Division will annotate the employee's pension account to reflect the USERRA credit for benefits eligibility only. We will also notify the employee of the crediting of this USERRA-eligible service at the home address and send a quotation for the cost to have the pension service credit count for benefits calculation. Along with the quotation will be an *Authorization Form* the employee must sign and return to the Division if he or she wishes to make the contributions and have the pension service credit to count for benefits calculation.

3. If the employee authorizes deductions to obtain retirement credit for the USERRA-eligible service, the employer should take and remit those deductions in accordance with the instructions on the *Certification of Payroll Deductions*, which the Division of Pensions and Benefits will send to the employer.

USERRA requires that contributions or lump sum payments to the retirement systems for USERRA-eligible service must be deferred from federal tax. Therefore, they must be taken through payroll deductions.

Employee requests to make additional elective contributions to **supplemental retirement plans** for the USERRA-eligible service periods should be made directly to the employer, who should contact the supplemental plan administrator for instructions on how to process and report these voluntary contributions.

This fact sheet has been produced and distributed by:

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